

**Senate Bill No. 171**

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Passed the Senate August 31, 2006

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*Secretary of the Senate*

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Passed the Assembly August 31, 2006

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Section 859.5 to the Penal Code, relating to criminal procedure.

## LEGISLATIVE COUNSEL'S DIGEST

SB 171, Alquist. Interrogation: recording.

Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.

This bill would provide that (1) except as specified, any custodial interrogation conducted at a place of detention of an individual suspected of committing or accused of a homicide or a violent felony, as defined, shall be electronically recorded, as specified; (2) the interrogating entity shall not destroy or alter the electronic recording of a custodial interrogation, except as specified; and (3) if a court finds that a defendant was subjected to an unlawful custodial interrogation, the court shall, at the request of the defendant, provide the jury with an instruction, developed by the Judicial Council, as specified. By imposing these new requirements on local law enforcement when they are interrogating a defendant suspected of committing or accused of a homicide or violent felony, this bill would impose a state-mandated local program upon local government.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature in enacting this act to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes in court as

to what actually occurred during the interrogation, thereby improving prosecution of the guilty while affording protection to the innocent.

SEC. 2. Section 859.5 is added to the Penal Code, to read:

859.5. (a) (1) Any custodial interrogation of an individual suspected of committing or accused of a homicide, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1, or a violent felony, as defined in subdivision (c) of Section 667.5, shall be electronically recorded in its entirety. This provision applies to both adult and juvenile proceedings.

(2) The requirement for the electronic recordation of a custodial interrogation pursuant to this section shall not apply if the person to be interrogated provides an electronically recorded statement expressing that he or she will speak to the law enforcement officer or officers only if the interrogation is not electronically recorded. Where electronic recording of that statement is refused by the person to be interrogated, then that refusal may be documented in writing.

(3) The interrogating entity shall not destroy or alter any electronic recording made of a custodial interrogation of a defendant until the time that a defendant's conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted or the prosecution of the defendant for that offense is barred by law. The interrogating entity may make one or more true, accurate, and complete copies of the electronic recording in a different format.

(b) Any law enforcement officer who conducts a custodial interrogation of an individual described in subdivision (a) shall be required to make an electronic recording of the interrogation pursuant to subdivision (a), unless the law enforcement officer can demonstrate, by a preponderance of the evidence, that the electronic recording of the custodial interrogation was not feasible for a specified reason, including, but not limited to, either of the following:

(1) Access to equipment required to electronically record an interrogation could not be obtained during the period of time that the defendant could be lawfully detained.

(2) The failure to create an electronic recording of the entire custodial interrogation was the result of a malfunction of the

recording device and obtaining a replacement device was not feasible.

(c) If a court finds that a defendant was subjected to a custodial interrogation in violation of subdivision (a), the court shall, at the request of the defendant, provide the jury with a instruction to be developed by the Judicial Council that advises the jury to view the statements made in that custodial interrogation with caution.

(d) For the purposes of this section, the following terms have the following meanings:

(1) “Custodial interrogation” means express questioning, or its functional equivalent, that is conducted at a place of detention that a law enforcement officer should know is reasonably likely to elicit an incriminating response from the defendant, under circumstances in which the defendant does not feel free to leave or terminate the questioning.

(2) “Electronic recording” means an analog or digital recording that includes the audio representations of any interrogator and individual involved in a custodial interrogation, provided however, that a motion picture, videotape, analog, or digital recording that includes both audio and visual representations of any interrogator and individual involved in a custodial interrogation is also permitted. If videotaping is used, the camera shall be positioned to capture images of the suspect and the interrogators. Law enforcement officers are encouraged to videotape the custodial interrogation of individuals suspected or accused of committing a homicide.

(3) “Law enforcement officer” means any officer of the police, sheriff, highway patrol, or district attorney, and any peace officer included in Chapter 4.5 (commencing with Section 830).

(4) “Place of detention” means a police station, sheriff’s station, correctional facility, holding facility for prisoners, or any other law enforcement facility in which a person may be held in detention in connection with any criminal charge that has been, or may be, filed against the person. “Place of detention” does not include a law enforcement vehicle.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.





Approved \_\_\_\_\_, 2006

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*Governor*